

#### D. Remarks

The claims are 1-6, 23 and 24, with claim 1 being the sole independent claim. Claims 7-22 have been cancelled. Claim 1 has been amended to include the subject matter of cancelled claim 7. The specification has been replaced with a substitute specification to correct typographical, grammatical and syntax errors and to better conform the text with proper idiomatic English. No new matter has been added. Reconsideration of the present claims is expressly requested.

Applicants affirm the provisional election of Group I, claims 1-12, 23 and 24. All non-elected claims have been cancelled.

Claims 8-12, 23 and 24 stand rejected under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite. Also, claims 8-12, 23 and 24 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 5,858,457 (Brinker).

Without acquiescence, and solely to expedite prosecution, Applicants have cancelled claims 8-12 and amended claims 23 and 24 to depend only from claim 1. Accordingly, the above rejections are moot and should be withdrawn.

Claim 1-7, 23 and 24 stand rejected has been rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Brinker. The grounds of rejection are respectfully traversed.

The presently claimed invention is directed to a porous material formed on a substrate. The porous material comprises a plurality of columnar pores, and the area surrounding the pores contains C, Si and/or Ge. Importantly, the depth direction of the columnar pores is substantially perpendicular to the substrate.

Brinker is directed to a method for forming microstructures. Applicants submit that Brinker fails to disclose or suggest forming a structure in which the depth direction of the columnar pores is substantially perpendicular to the substrate, as presently claimed.

The Examiner has alleged on page 6 of the Office Action that the pores in Brinker are formed by evaporation of the solvent and water, indicating that the pores are substantially perpendicular to the substrate. Applicants submit, however, that evaporation of the solvent and water does not necessarily result in a formation of the pillar-shaped pores oriented in a direction, which is substantially perpendicular to the substrate. Brinker does not disclose or suggest exercising any specific directional control over the pores, so that they can be formed as presently claimed. Accordingly, Applicants respectfully submit that the presently claimed invention is patentable over Brinker.


Claims 1-12, 23 and 24 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-12, 26 and 27 of co-pending Application No. 10/640,047. Applicants note that, under M.P.E.P. § 804(I)(B), if this is the only rejection remaining in the application, it should be withdrawn, so that the case can proceed to issue as a patent.

Wherefore, Applicants respectfully request that the outstanding rejections be withdrawn and that the present case be passed to issue.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our

address given below.

Respectfully submitted,

  
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Attorney for Applicants  
Jason M. Okun  
Registration No. 48,512

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3801  
Facsimile: (212) 218-2200

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